



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 1356-00

15 March 2000

LTCOL [REDACTED] USMCR
[REDACTED]

Dear Colonel [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 22 February 2000, a copy of which is attached. They also considered your rebuttal letter dated 6 March 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

1610
MMER/PERB

22 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
LIEUTENANT COLONEL [REDACTED] SMCR

Ref: (a) LtC [REDACTED] Form 149 of 13 Dec 99
(b) MCO P1610.7B w/Ch 1-2 and ALMAR 099/85

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 8 February 2000 to consider Lieutenant Colonel [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 841201 to 850702 (TR) was requested. Reference (b) is the performance evaluation directives governing submission of the report.
2. The petitioner believes the report contains substantive inaccuracies, specifically in the marks assigned in Items 13b (additional duties), 13d (handling officers), and 13f (training personnel). It is his position that he should have been assigned an "observed" mark in Item 13b since, as documented by an extract from his Officer Qualification Record (OQR), he held 16 additional duties which encompassed a significant portion of his time. In challenging the mark in Item 13d the petitioner furnishes his analysis as to how his responsibilities as the Commanding Officer, to ensure the training of each officer and enlisted Marine, would again have justified and warranted an "observed" mark in that category. Concerning the mark in Item 13f, the petitioner points out that as the Commanding Officer he was solely responsible for the unit and individual training of all Marines in the command; that by their very nature and established directives, successful annual training was required (and accomplished). As a final matter, the petitioner believes that some of the narrative comments in Section B are unfair/inaccurate. To support his appeal, the petitioner furnishes his own statement and several advocacy letters.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. At the outset, the PERB emphasizes that of the five advocacy statements enclosed with reference (a), only the one from Maj [REDACTED] addresses performance during the finite period

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covered by the report. All others speak of accomplishments/ observation prior to that period. Consequently, the Board finds they are not germane to the report at issue. As for the letter from Major [REDACTED] the Board is quick to observe that the first sentence in paragraph three of his letter of 6 November 1990 (Attachment F to reference (a)) qualifies his opinions (i.e., "I am not in a position to judge Captain [REDACTED]'s overall performance during the reporting periods.").

b. Regarding the petitioner's challenge to the "not observed" mark in Item 13b, the PERB points out that a Headquarters Company Commanding Officer has many assigned duties that are inherent to that billet. The majority are listed to meet administrative regulations and do not meet the criteria for assigning an observed mark in Item 13b. As stipulated in subparagraph 3004.4b of reference (b), Item 13b (additional duties) was only graded if the Marine reported on devoted significant time and effort to that duty. Evidently the Reporting Senior believed a "not observed" mark was justified and exercised his prerogative in doing so.

c. Why the Reporting Senior did not assign an observed grade in Item 13d is not known. However, his failure to do so is not an invalidating factor. Similarly, a "not observed" mark in Item 13f (training personnel) is not an invalidating factor.

d. In his Section C comments, Colonel [REDACTED] clearly stated that the petitioner had been counseled. That fact was not challenged over 14 years ago when the petitioner submitted his rebuttal, and he offers no substantiation or corroboration to prove that disclaimer now.

e. The petitioner's argument that the Section C comments were "nebulous" so as to make removal of the report difficult, and further compounded by poor advice by a legal officer, is considered without merit. If he didn't understand the Section C comments, there is no doubt that he fully understood the Reviewing Officer's comments (which directly reinforced the Reporting Senior's evaluation). The petitioner seemingly contradicts himself, since in the first sentence of his rebuttal to the report he states: "... I am fully aware of the severity of his (the Reviewing Officer's) remarks." There is nothing nebulous about the statement.

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f. The petitioner's receipt of the Navy and Marine Corps Achievement Medal was for a period subsequent to the challenged fitness report, and as a staff officer, vice a Commanding Officer. It was under different circumstances and has absolutely no relevancy to his performance recorded in the fitness report under consideration.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Lieutenant Colonel [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps